

Date of Hearing: June 29, 2021

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Timothy Grayson, Chair
SB 360 (Wilk) – As Introduced February 10, 2021

SENATE VOTE: 39-0

SUBJECT: Consumer Credit Reporting Agencies Act: escrow agent rating services and escrow agents

SUMMARY: This bill extends, from January 1, 2022 to January 1, 2027, the sunset date on the provision of law applicable to escrow agent rating services.

EXISTING LAW:

- 1) Defines an escrow agent rating service as a person or entity that prepares a report, for compensation or in expectation of compensation, for use by a creditor in evaluating the capacity of an escrow agent to perform escrow services in connection with an extension of credit (Civil Code Section 1785.28).
- 2) Requires an escrow agent rating service to comply with and be subject to the specified sections of law applicable to consumer credit reporting agencies (Civil Code Section 1785.28)
- 3) Requires an escrow agent rating service to establish policies and procedures reasonably intended to safeguard from theft or misuse any personally identifiable information it obtains from an escrow agent (Civil Code Section 1785.28).
- 4) Sunsets the aforementioned provisions on January 1, 2022 (Civil Code Section 1785.28.6).

FISCAL EFFECT: Unknown. This bill is keyed nonfiscal by Legislative Counsel.

COMMENTS:

1) **Purpose.**

According to the author:

In 2013, the California Legislature enacted important protections for California escrow agents. New entities, defined as “escrow agent rating services” in Civil Code Section 1785.28, were evaluating the suitability of escrow agents to perform settlement services by examining credit information, bankruptcy filings, and other criteria. These companies were providing the services as third-party vendors for lenders to assist with federal requirements to conduct due diligence on their vendors. The 2013 bill applied important protections from California’s credit reporting laws to escrow agents, such as the right to receive a copy of any report produced by the rating service, and the right to dispute and correct inaccurate information. Without these protections, escrow agents could literally be put out of business based upon inaccurate information. The 2013 bill included a January 1,

2017 sunset date, to determine if any problems arose for lenders or others as a result of extending credit report protections to these ratings services. Assembly Bill 2416 (Wilk) repealed this sunset date, and set a new sunset date as January 1, 2022, as the Legislature was aware of no implementation problems. This bill merely extends these protections to January 1, 2027.

2) Background

In 2012, the Consumer Financial Protection Bureau (CFPB) released a bulletin notifying institutions under CFPB supervision that they may be held responsible for the actions of the companies with whom they contract. The bulletin recommended that “supervised financial institutions take steps to ensure business arrangements with service providers do not present unwarranted risks to consumer.”¹

One way a financial institution or lender can help protect itself from the potential malfeasance of a contracted entity is through the use of a risk manager provider (RMP). A RMP develops a database of companies and their associated risk score, and like a credit score, these risk scores are meant to be a signal of soundness and safety. Typically, an RMP uses a mix of private and public data to develop their scores, and sometimes an RMP will charge a covered company a fee in order to maintain “accreditation” to remain part of the database. As use of RMPs grew following the CFPB bulletin, these practices and fee structures raised a number of privacy and fairness concerns, including the concern that an RMP could, through a bad review or no review at all, push an escrow agent out of the industry.

In December 2012, the Department of Corporations (now DFPI) released a bulletin outlining these concerns, stating:

Lenders subject to the Department’s jurisdiction should be cautious of delegating their responsibility to vet service providers to third parties, and are reminded that they are responsible for such companies’ compliance with the law. Escrow agents should be cautious of subscribing to the vetting services of third party companies for a fee, in order to get on a list provided to lenders, as these actions may lead to violations of law. All parties should take necessary precautions prior to sharing personal and confidential information with third parties.²

3) Legislative response.

In 2013, the Legislature enacted AB 1169 (Daly), Chapter 380, Statutes of 2013, to provide additional protections for California escrow agents when an RMP, defined in the bill as an “escrow agent rating service,” evaluated the agent’s suitability by examining credit information, bankruptcy filings, and other criteria. AB 1169’s goal was to protect escrow agents from unfair, inaccurate, or private information and applied the following protections from the Consumer Credit Reporting Agencies Act to escrow agents:

¹ https://files.consumerfinance.gov/f/documents/201204_cfpb_bulletin_service-providers.pdf

² https://www.stewart.com/content/dam/stewart/CFPB/pdfs/12-12-12_CA-bulletin-re-vetting.pdf

- a) The right for a consumer (in this case, an escrow agent) to inspect all files maintained by an escrow agent rating service regarding the consumer.
 - b) The requirement that an escrow agent rating service inform of a consumer of their right to request a decoded written version of the file.
 - c) The requirement that an escrow agent rating service disclose the recipients of any consumer credit report on the consumer that it furnishes for employment purposes, within the two-year period preceding a consumer's request for such information.
 - d) The requirement that an escrow agent rating service furnish a consumer credit report only in accordance with the written instructions of the consumer to whom it relates.
 - e) The prohibition against including certain types of adverse information that exceed a certain age (seven years in some cases, ten years in other cases; e.g., bankruptcies, accounts sent to collection).
 - f) The requirement that an escrow agent rating service maintain reasonable procedures to assure the maximum possible accuracy of the information about whom the report relates.
 - g) The requirement to allow a consumer to dispute the completeness or accuracy of any item of information in their credit file, requirement that the consumer credit reporting agency reinvestigate disputed information, requirement to allow a consumer to include a note in their file disputing certain information, and requirement that the consumer credit reporting agency include a consumer's note in any consumer credit report it provides that includes information being disputed by that consumer.
 - h) The requirement to specify the source of any public record included in a credit report.
- 4) **How these protections are used.**

This bill extends the sunset in current law that applies Consumer Credit Reporting Agencies Act protections to the use of escrow agent rating services. In a response to inquiries from the Senate Committee on Banking and Financial Institutions, one escrow agent stakeholder provided the following statement on how they utilize these protections:

As an owner of an independent licensed escrow company, due diligence requests land on my desk. The requests range from the very simplest requirements to requesting detailed banking account information, employee personal data, and how do I secure my server-type of questions. As a fiduciary, it is my responsibility to not only protect our client's information, but that of my employees and company, as well. Therefore, when I receive requests from unlicensed, unregulated vetting companies, the days/weeks of conversations with the lender's compliance department ensues. Once I mention California Civil Code Section 1785.28, the conversation becomes one of educating the [lender's] compliance department as to why I cannot give my employee's social security number to their third party vetter to what items I can send to satisfy their due diligence.

My typical package includes a copy of the following items: a copy of my city license; a copy of my DFPI license; a copy of a letter from the Escrow Agents Fidelity Corporation (EAFC), stating that our company is in good standing, along with a copy of the EAFC fidelity bond; a copy of the Escrow Institute of California's model policy and procedures, along with an explanation that we model our policies and procedures around these; and a completed lender information sheet, which requests high level information regarding the company.

We work diligently to help them with their due diligence of our company; however, personal and confidential information about employees, including social security number, driver's license number, home addresses and the like are not provided. By having the tool of California's Civil Code Section 1785.28, the lenders have universally accepted the items we provide and have instructed their third party, unlicensed, unregulated vetting company that it is no longer necessary for them to require the personal and confidential information regarding our employees and sensitive company information.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Escrow Association.

Opposition

None on file.

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